Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

In the Matter of	)	
Updating the Reciprocal Compensation	)	**WC Docket No. 18-155**
Regime to Eliminate Access Arbitrage	)	

Reply Comments of Wide Voice LLC

I. Summary Of Position

The record in this proceeding is mixed, inconclusive, and supplies the Commission with an insufficient basis to adopt the proposals described in the NPRM without significant modification. Indeed, even the party that filed the Forbearance Petition that gave rise to the NPRM has cautioned the agency from adopting the rules described in the NPRM without material modification.[1]

While there is general support for some sort of access reform, all carriers seem to have differing views of the access arbitrage problem, where it exists, rural vs. metro, wireline vs. wireless, and whether there is a larger issue to be addressed. Some commenters focus on the CMRS access arbitrage issue, which is much larger in both revenue and volume as compared to access arbitrage as targeted by current triggers. There is a clear separation between ILECs, many of which have affiliated CMRS operations, CLECs who host applications deemed as

[1] AT&T Comments at 12.

access stimulating, and CEA providers who serve as intermediate carriers of access stimulators. Considering the competitive market and commenters' various commercial interests, we encourage the FCC to be extremely - excruciatingly - clear in whatever rule emerges from this docket. A lack of clarity will materially advantage dominant market participants over others and overall stagnate the industry. Intermediate carriers will be particularly harmed by the regulatory uncertainty contained in the NPRM. On the other hand, clear, nondiscriminatory rules will provide for the advancement of the marketplace.

Furthermore, we agree with several commenters that the data supporting this NPRM is not clear and question whether there is really an access arbitrage problem at all.[2] Recently, the FCC ruled that Aureon is considered a CLEC and must benchmark its rates to the competing ILEC, so the CEA rate of return implicit subsidy has effectively been removed with pricing aligned to other market operators.[3] This decision also included the access stimulation traffic that Aereon carries, so is there still a pricing issue with stimulating LECs behind CEA tandems? Some may argue that there is a mileage issue, which the FCC could address in this proceeding as Inteliquent suggests.[4] With the Aureon ruling, we assume other CEA pricing changes will follow suit. Consistent with several other commenters, WideVoice is supportive of broader access reforms across the industry.[5] We caution, however, against attempting to design rules that discriminately target specific operators while sanctioning similar behavior of others.

II. Applying The Current Triggers With New Obligations Are Unclear And Will Only Create Confusion

In reviewing the comments, there is a wide variation in interpretations of the proposals in the NPRM. The only consistent theme among commenters is that the proposed guidelines should not apply to *their* revenue generating traffic. As such, the FCC should consider whether

[2] Competitive Local Exchange Carriers Comments at pgs. 14-35.
[3] Docket No. 18-60, Memorandum Opinion and Order, FCC 18-105, released July 31, 2018.
[4] Inteliquent Comments at Pg. 6.
[5] Sprint Comments at Pg. 1; Verizon Comments at Pg. 1.

the rules are targeting the issue it seeks to address and whether the rules are easily gamed so as to avoid triggers. Wide Voice suggests that the proposed rules will be easily gamed and will frustrate the FCC's goals in this proceeding. With the various types of carrier classifications -- CLEC, ILEC/PCL, CMRS, and IPES -- along with varying conditions for affiliation and access stimulation, there are so many variables that the FCC must consider when making and enforcing its pricing conditions. The current system is already riddled with self help loopholes and the FCC's proposal only adds another dimension of uncertainty and confusion. Even the NTCA states that this is a "tricky definitional issue."[6] As the lines blur between the various carrier types, the FCC should focus its rulemaking on minimizing the segregation of multiple traffic types and improving clarity and consistency. Accordingly, many commenters implicitly view this as a half measure and call for full access reform inline with establishing a national, bill and keep end-state.[7]

It is easy for dominant operators to support the FCC's NPRM as they believe it will not impact their business and they have the market power to assert that position. It may also be true that these dominant operators will continue their long history of using FCC regulation as an endorsement of their dominant practices as they exert ever-greater pressure over smaller, competitive providers. This is Wide Voice's historic experience. The FCC must recognize this and be sure not to disadvantage smaller market operators and market entrants in its ruling as it is these providers that maintain a competitive market for consumers.

III. If Aggregated Interconnection Has Value, Who Should Pay For It?

While we do not necessarily agree with all of T-Mobile's or Inteliquent's business practices, we agree that there is value to aggregated interconnections and the platforms that provide this service. T-Mobile describes the value they receive through their partnership with

[6] NTCA Comments at Pg. 7.
[7] Sprint Comments at Pg. 1; Verizon Comments at Pg. 1.

Inteliquent, including network protection, IP transition, etc., and Wide Voice concurs. In fact, we believe that aggregated, more intelligent interconnections will provide for future service innovations across networks. However, the real question for this proceeding is: who should pay for this value? If carriers are forced to connect through an intermediate carrier that charges access, then the originating carrier is paying for this value, not the carrier that is receiving the value, T-Mobile and Inteliquent. Since the originating carriers are paying access to the intermediate carrier and the terminating carrier is receiving this value, isn't this a form of revenue sharing and subject to the first trigger of the access stimulation rules? The only reason it wouldn't be deemed as access stimulation is if Inteliquent's business is large enough to absorb the increased traffic without tripping the growth trigger or traffic balance conditions. Accordingly, smaller competitive operators are disadvantaged with the Commission's proposed rules.

If this is true -- as we think it is -- then HD Tandem's proposed Access Stimulator definition as "any carrier that collects access but denies a direct connect" seems an appropriate rule for the Commission to establish to define access stimulation.[8] This would broadly address all access arbitrage issues, from applications behind CEA tandems to CMRS behind access homing tandems. There is no reason -- cost or otherwise -- to treat these parties differently. From this point of competitive neutrality, the FCC should decide on how this traffic should be priced and/or exchanged. This would create some sort of consistency across the industry, which is what the FCC should aim for in its access reform. Accordingly, the Commission should consider HD Tandem's broad and nondiscriminatory Access Stimulator definition. Any other result would place the Commission in a position of picking winners and losers based on technology-specific, FCC-created categories detached from economics or costs.

[8] HD Tandem Comments at Pg. 8.

IV. Adopting The NPRM's Rules Will Encourage Continued Non-Payment Self-Help

Many CLEC commenters have argued that the FCC must address the issue of non-pay self help in whatever rules it decides to make in this and future proceedings as this has not only become a common practice, but seemingly a business strategy for dominant operators.[9] Wide Voice suggests that this is the issue that plagues the industry and competitive providers. Correspondingly, carriers are unlikely to directly connect as CenturyLink alludes to in its comments.[10] Positions such as these provide the FCC with a clear indication that support for the proposed rules, and in particular the suggestion that access charge payment obligations should be reversed, will simply be a stick for larger carriers to waive and deny their obligations to pay based on unclear rules. SDN goes as far to say that they do not want to be in between the disputes of IXCs and access stimulators as the current rules will only ensure that nobody pays the intermediary.[11] To avoid these problems and those associated with direct connects that won't happen and threats of economic reversal, the FCC should require LEC's meeting the definition of access stimulation, to connect to alternative competitive tandems benchmarked to price cap LECs. Furthermore, we agree with Greenway's recommendation that the FCC maintain jurisdiction of any access stimulation designations to avoid self help issues like that of Peerless, who was just awarded $48 million from Verizon on this issue.[12] What investments could they have made with this money, not to mention their time and resources involved in lengthy litigation? Should self-help issues continue, the Commission should have strict enforcement with sufficient damages, such as treble damages plus attorney's fees, to reduce the incentives for carrier non-pay self help.

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[9] Bandwidth Ex Parte; Greenway Comments at Pg. 2.
[10] CenturyLink Comments at Pg. 3.
[11] SDN Comments at Pg. 4.
[12] Greenway Comments at Pg. 2.

V. Conclusion

The Commission's stated goal in this proceeding is to eliminate access arbitrage in the intercarrier compensation system. However, before it adopts rules it must acknowledge its obligation to act with clarity and precision: defining what specific arbitrage it is targeting with its rules. In other contexts, arbitrage is defined as the practice of taking advantage of a price difference between two or more adjacent markets. As such, we believe that the FCC's proposal is going too far and will exacerbate price differences between LECs defined as access stimulators and those who are not; despite offering similar services and could create arbitrage opportunities in other areas. It is likely that arbitrage opportunities will continue to exist as the current proposed rules do not include any effective notion of benchmarking rates to align overall market pricing and mitigate market arbitrage opportunities.

The FCC should focus its rules on closing those market price differences, such as the ones that exist in CEA markets, that of mileage or through uniform, national, and reciprocal bill and keep policies. Furthermore, Wide Voice urges the FCC to issue a declaration that is counter to the Aureon proposal, explicitly stating that access stimulation is not illegal. Consumers have spoken - they value the services that ride over these access connections. The industry has villainized it and urged the government to adopt this view in the NPRM to further legitimize those beliefs. This kind of consolidated effort has a ripple effect on how carriers handle traffic to deemed stimulators and has encouraged traffic disruptions and a likely increase in non-pay, self-help strategies.

Moving forward, and as many commenters mention, the Commission should embark on further access reforms in line with its vision of a national policy of bill and keep. If it chooses to continue with this rulemaking, it should ensure that any terms between direct connecting

carrier are fully reciprocal in nature as this too ensures an equitable and efficient negotiation and covers the exchange of traffic between retail providers.

Respectfully submitted,

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